MONTANA LEGISLATIVE HISTORY

Chapter 169 1999

Bill H _____ S 165 Original bill & history ✓ C

| H. Committee on Judiciary | | | S. Committee on Judiciary | | |
|---|---|---|---|---|---|
| Hearing Date(s) | 3-8 | ✓ C | Hearing Date(s) | 1-13 | ✓ C |
| | 3-9 | ✓ C | | 1-21 | ✓ C |
| | | C | | 1-25 | ✓ C |
| | | C | | | C |
| Date Out | | C | | | |

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

## LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

SB 165 Introduced by Lynch, et al. *LC0385 Drafter: C. Erickson*

Create Possessory Lien for the Payment of Towing and Storage Charges;...

| | | | |
|---|---|---|---|
| 10/27 | Fiscal Note Needed | | |
| 1/08 | Introduced and 1st Reading | | |
| 1/08 | Referred to Judiciary | | |
| 1/13 | Hearing | | |
| 1/26 | Committee Executive Action--Bill Passed as Amended | 8 | 0 |
| 1/26 | Committee Report--Bill Passed as Amended | | |
| 1/27 | 2nd Reading Passed | 50 | 0 |
| 1/28 | 3rd Reading Passed | 48 | 1 |
| | Transmitted to House | | |
| 2/16 | Referred to Judiciary | | |
| 3/08 | Hearing | | |
| 3/09 | Committee Executive Action--Bill Concurred as Amended | 16 | 4 |
| 3/10 | Committee Report--Bill Concurred as Amended | | |
| 3/13 | 2nd Reading Concurred | 84 | 14 |
| 3/15 | 3rd Reading Concurred | 77 | 22 |
| | Returned to Senate with Amendments | | |
| 3/17 | 2nd Reading House Amendments Concurred | 49 | 0 |
| 3/18 | 3rd Reading Passed as Amended by House | 48 | 0 |
| 3/18 | Sent to Enrolling | | |
| 3/19 | Returned from Enrolling | | |
| 3/22 | Signed by President | | |
| 3/23 | Signed by Speaker | | |
| 3/23 | Transmitted to Governor | | |
| 3/24 | Signed by Governor | | |
| 3/25 | Chapter Number Assigned | | |
| | Chapter Number 169 | | |
| | Effective Date: 10/01/1999 - All Sections | | |

SB 166 Introduced by Lynch, et al. *LC0383 Drafter: C. Erickson*

Revise County Sheriff and City Police Responsibilities for Handling Abandoned Vehicles;...

| | | | |
|---|---|---|---|
| 10/27 | Fiscal Note Needed | | |
| 1/08 | Introduced and 1st Reading | | |
| 1/08 | Referred to Local Government | | |
| 1/08 | Fiscal Note Requested | | |
| 1/14 | Fiscal Note Received | | |
| 1/15 | Fiscal Note Signed | | |
| 1/15 | Fiscal Note Printed | | |
| 1/19 | Hearing | | |
| 1/22 | Committee Executive Action--Bill Passed as Amended | 11 | 0 |
| 1/22 | Committee Report--Bill Passed as Amended | | |
| 1/23 | 2nd Reading Passed | 45 | 0 |
| 1/26 | 3rd Reading Passed | 49 | 0 |
| | Transmitted to House | | |
| 2/16 | Referred to Local Government | | |
| 3/04 | Hearing | | |
| 3/10 | Committee Executive Action--Bill Concurred | 14 | 2 |
| 3/11 | Committee Report--Bill Concurred | | |
| 3/13 | 2nd Reading Concurred | 88 | 11 |

Senate BILL NO. 165

INTRODUCED BY Lynch Eck Keating
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A POSSESSORY LIEN ON A MOTOR VEHICLE FOR THE PAYMENT OF TOWING AND STORAGE CHARGES ON THE MOTOR VEHICLE; PROVIDING FOR FILING THE LIEN; PROVIDING A STATUTE OF LIMITATIONS FOR FORECLOSING ON THE LIEN; AND PROVIDING FOR PERSONS WHO MAY BE PARTIES TO AN ACTION ON THE LIEN."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Towing and storage lien.** (1) A tow truck operator who tows and stores a motor vehicle has a possessory lien on the vehicle for the towing and storage charges. The lien attaches when the tow truck operator tows the vehicle at the request of the owner, a law enforcement officer, or the owner of the property on which the motor vehicle is parked without permission. The lien remains in effect while the vehicle is in the possession of the tow truck operator. The vehicle may be sold, as provided in [section 4], to pay the expenses incurred in the removal and storage of the vehicle.

(2) A lien under this section is limited to towing and storage charges. Storage charges cease to be part of the lien after 60 days unless the registered owner or lienholder, if any, has been given actual notice of the possessory lien within that time or unless a certified letter has been mailed within that time to the owner and lienholder, if any, at their addresses of record with the department.

NEW SECTION. **Section 2. Filing -- content of lien notice.** (1) Within 30 days of the attachment of the lien provided for in [section 1], the notice for a lien must be filed with the department in accordance with the provisions of 61-3-103.

(2) The notice for the lien may be filed in substantially this form:

...., Claimant, vs. ....

I, .... (insert name and address of person claiming lien), claim a lien pursuant to the provisions of [section 1].

I claim this lien against .... (give description of motor vehicle against which the lien is claimed sufficient to identify it).

The registered owner is .... (give name and address of person against whom the lien is being claimed).

At the request of .... (give name and address of party with whom person claiming lien contracted to furnish services), I provided the following: .... (give description of the services provided). I furnished these services on .... (give date).

The amount remaining unpaid is .... (insert the amount unpaid).

NEW SECTION. **Section 3. Reclaiming vehicle.** (1) The owner or lienholder, if any, of a vehicle that has been towed by a tow truck operator may reclaim the vehicle any time after it is removed to a storage facility. The owner or lienholder, if any, shall present to the tow truck operator satisfactory proof of ownership or right to possession and pay the expenses incurred in the removal and storage of the vehicle.

(2) Within 10 days of the vehicle being reclaimed, the tow truck operator shall file a statement of release of the lien with the department.

NEW SECTION. **Section 4. Notice of sale -- sale of vehicle -- certificate of sale -- certificate of ownership.** (1) If the motor vehicle is not reclaimed, as provided in [section 3], within 30 days after the notification of the owner and lienholder, if any, by certified letter, as provided in this section, the vehicle must be sold after giving 20 days' notice of the sale. The notice must be delivered to the owner and lienholder, if any, by certified letter, return receipt requested. The notice must contain a description of the motor vehicle, including its registration number and vehicle identification number; the date, time, and place of the sale; a statement of the amount due; and the name and address of the person to whom the charges are due. The tow truck operator shall deliver to the sheriff of the county or the police of the city where the vehicle is located proof of the notice of sale given to the owner and lienholder, if any.

(2) If the motor vehicle is not reclaimed, as provided in [section 3], within 20 days after the notification of the sale by certified letter, the sheriff or the city police shall sell the vehicle at public auction in the manner provided in 25-13-701 through 25-13-709.

(3) The sheriff or the city police shall issue a certificate of sale to the buyer of the vehicle upon the receipt of the purchase price. The department shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of fees required by law.

NEW SECTION. **Section 5. Sale proceeds.** The proceeds from a sale made under [section 4] must be applied first to the payment of costs and expenses of the sale and then to the costs and expenses of the person having a possessory lien on the vehicle under [section 1]. The remaining proceeds must be transmitted by the sheriff or the city police to the department to be distributed to the registered owner or lienholder, if any, entitled to the remaining proceeds. A purchaser in good faith of a titled motor vehicle sold under [section 4] takes the vehicle free of any rights of prior lien.

NEW SECTION. **Section 6. Parties -- limitation of actions.** (1) A person with an interest in the controversy or in the motor vehicle charged with a lien created pursuant to [sections 1 and 2] may be a party to any action to foreclose upon a lien created pursuant to [sections 1 and 2].

(2) All actions brought to enforce a lien created pursuant to [sections 1 and 2] must be commenced within 2 years from the date of the filing of the lien.

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to [sections 1 through 6].

- END -

**SB 155** SPONSOR: Berry, Dale SHORT TITLE: Revise disclosure laws for real estate brokers
REFERRED ON: 01/07/1999 HEARD ON: 01/19/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 03/19/1999 Chapter Number Assigned

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**SB 158** SPONSOR: Glaser, Bill SHORT TITLE: Revise dangerous drug laws
REFERRED ON: 01/07/1999 HEARD ON: 01/13/1999
EXECUTIVE ACTION: 01/16/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

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**SB 163** SPONSOR: Mahlum, Dale SHORT TITLE: Railroad vandalism and trespass act
REFERRED ON: 01/08/1999 HEARD ON: 01/14/1999
EXECUTIVE ACTION: 02/01/1999 Bill Passed as Amended -- VOTE: 6 - 3
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

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**SB 165** SPONSOR: Lynch, J.D. SHORT TITLE: Create possessory lien for the payment of towing and storage charges
REFERRED ON: 01/08/1999 HEARD ON: 01/13/1999
EXECUTIVE ACTION: 01/26/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 03/25/1999 Chapter Number Assigned

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**SB 176** SPONSOR: Bohlinger, John SHORT TITLE: Revise laws on abuse of elders and persons with developmental disabilities
REFERRED ON: 01/09/1999 HEARD ON: 01/14/1999
EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 03/30/1999 Chapter Number Assigned

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**SB 179** SPONSOR: Holden, Ric SHORT TITLE: Clarify time of effect of temporary driving permit
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 01/09/1999 HEARD ON: 01/14/1999
EXECUTIVE ACTION: 01/14/1999 Bill Passed -- VOTE: 9 - 0
FINAL DISPOSITION 04/12/1999 Chapter Number Assigned

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**SB 185** SPONSOR: Christiaens, Chris SHORT TITLE: Prohibit clearinghouse sweepstakes fraud
REFERRED ON: 01/11/1999 HEARD ON: 01/18/1999
TABLED ON: 01/22/1999
FINAL DISPOSITION 03/31/1999 (S) Missed Deadline for Revenue Bill Transmittal

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# MINUTES

## MONTANA SENATE
## 56th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD** on January 13, 1999 at 9:00 A.M., in Room 108 Capitol.

## ROLL CALL

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Steve Doherty (D)
Sen. Sue Bartlett (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch
Jodi Pauley, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 158, 1/8/1999; SB 165, 1/8/1999
Executive Action: SB 8; SB 20; SB 54; SB 60; SB 63

## HEARING ON SB 158

**Sponsor:** **SENATOR BILL GLASER, SD 8, Huntley**

**Proponents:**

**Brenda Nordland, MT Department of Justice**

## HEARING ON SB 165

**Sponsor: SENATOR J.D. LYNCH, SD 19, Butte**

**Proponents:**
**Bob Gilbert, MT Tow Truck Assoc.**
**Milo Casagrande, MT Tow Truck Assoc.**
**Jim Dusenbery, MT Tow Truck Assoc.**
**Don Cerovski, MT. Tow Truck Assoc.**
**Brenda Nordland, MT Department of Justice**

**Opponents:**
**Bob Pyfer, MT Credit Union**

**Opening Statement by the Sponsor:**

**SENATOR J.D. LYNCH, SD 19, Butte,** said towers should get paid for their services. Towers are not any different than banks or credit unions. They want to be paid for their services because they store vehicles on behalf of the owner and often times are required by the highway patrol to take care of abandoned vehicles.

**Proponent's Testimony:**

**Bob Gilbert, MT Tow Truck Assoc.,** said this bill will allow towers to collect for services rendered. The current situation is, if a vehicle is towed into a yard, the owner can come get his/her vehicle and tell the tower to send the bill. There is no legal recourse to collect that money. With this bill they would have a possessor lien which takes place the moment the tower picks up the vehicle. A vehicle that has been towed to a locked yard is in better shape than one that has been abandoned along the highway and is subject to vandalism. There are forms under section 2 that specifies how a tow truck operator will file and release a lien, etc. Storage charges cannot exceed 60 days unless the owner has been contacted. He said as a banker, he would rather see a vehicle come into a locked storage yard rather than along the side of the highway. This bill will help the small business owners of Montana. He handed out letters of support. **EXHIBIT(3)**

**Milo Casagrande, MT Tow Truck Assoc.,** said this bill is very important especially for small towers. When law enforcement has them come pick up a vehicle they request the tower to get the vehicle and secure it. This is at the towers expense until the owner comes to repossess it. At this time there is no lien law.

**Jim Dusenbery, MT Tow Truck Assoc.**, said they have to pick up vehicles and are responsible for that vehicle until is picked up by its respectful owner. It is important the tower gets paid for his services.

**Don Cerovski, MT. Tow Truck Assoc.**, said this bill would save the liability of his business.

**Brenda Nordland, MT Department of Justice**, said they already have other types of possessor liens and this would fit under those liens. She recommended an amendment on page 3, section 5, the department does not need to be involved, the sheriff is more than qualified to handle distribution of proceeds. **EXHIBIT(4)**

***{Tape : 1; Side : B; Approx. Time Counter : 10:00 a.m.}***

**Opponent's Testimony:**

**Bob Pyfer, MT Credit Union**, said this bill is not needed because of the agisters lien. It does provide a lien for services done on private property and those services include safe keeping and carriage. Towing and storage should be under the agisters lien. The agisters lien requires a 30 day notice to lien holders before they get paid. Under this bill there is no written or actual notice required by the bill. A lien holder could have the 60 day storage charges plus towing, etc. and they could have a lot of costs before having any notice. This bill is not needed if the agisters lien law is used by towing agencies. If this bill is favorable by the committee then the amendment of a 30 day notice should be required.

**Questions from Committee Members and Responses:**

**SENATOR REINY JABS** asked if a person comes in and gets his car right after it was taken by the tower, is the owner immediately charged for the paperwork, etc.? **Mr. Gilbert** said no, the owner would just have the towing charge. There is no filing until after 30 days.

**SENATOR JABS** asked if the car is sold and they cannot find the owner of the vehicle to give the proceeds to, what happens to that money? **Mr. Gilbert** said it would go back to the owner of the lien. If they couldn't find an owner then it would go into the county fund.

**SENATOR BARTLETT** asked why they didn't amend the agisters lien? **Mr. Gilbert** said they researched this area and there was no previous lien that they fell under. There are certain parts of

the agisters lien they could fall under, but it is not clear. They felt having an new lien was easier.

**SENATOR BARTLETT** said another approach is to go into the agisters lien and make it clear that it does apply to the kind of charges that they are concerned about. The advantage is they are established liens and everyone is used to working with them. **Mr. Gilbert** said they would be willing to work on this. The only concern is if they don't do something, they are left out in the cold.

**SENATOR BARTLETT** asked on page 1, line 17-18, it talks about storage charges. Do storage charges quit accumulating after the 60 days or are they eliminated all together from the lien. **Mr. Gilbert** said they quit accumulating and this is current law.

**SENATOR BARTLETT** said it talks about the sheriff or city police taking enforcement for the sale of abandoned vehicles etc.. Usually it is always the sheriff who takes care of this, not the city police. **Mr. Gilbert** said perhaps this is a reference to a car picked up in the city, etc. but he was not sure.

**SENATOR DOHERTY** said if there is a motor vehicle accident and the highway patrolman has the tower take it to his yard and store it and as time goes by, the car gets forgotten. He asked does this bill clarify that the highway patrol, city police, etc. is responsible for retaining those charges. **Mr. Gilbert** said he didn't believe that was in this bill.

**SENATOR DOHERTY** said the responsibility often falls on the tow truck operator and nobody wants to pay for it. It is not the owner's fault that the highway patrol requested it to be stored. **Mr. Gilbert** said this is correct and it is a problem, but separate from this piece of legislation.

**SENATOR JABS** asked if insurance companies pay for storage? **Mr. Gilbert** said yes.

**CHAIRMAN GROSFIELD** asked if the title was broad enough to do this through the agisters process. **Valencia Lane** said the title could be amended because it says they are creating a lien and they could amend it to clarify agisters lien laws.

**Closing by Sponsor:**

**SENATOR LYNCH** said one of the reasons this cannot be covered under the agisters lien is it does not include towing. This bill will help the small business people and that is important.

*{Tape : 1; Side : B; Approx. Time Counter : 10:17 a.m.}*

## EXECUTIVE ACTION ON SB 8

**Motion**: **SENATOR DOHERTY** moved amendments for SB 8. **EXHIBIT(5)**

**Discussion**:

**Valencia Lane** discussed amendments. **(EXHIBIT 5)** She also discussed a memorandum from Joe Thaggard, Department of Justice. **EXHIBIT(6)**

**SENATOR DOHERTY** said he was concerned about procedural irregularity and what those terms meant. The search and seizure ground is murky enough already without adding new areas. He referred to the memorandum. **(EXHIBIT 6)**

**CHAIRMAN GROSFIELD** asked if the amendments satisfy their concerns. He read from title 44, chapter 5 on confidential criminal justice information. The question is, if John Doe whose child is a friend of the drug runner's child and they are talking about soccer etc. several times a day, is that person's identity going to be protected. **Valencia Lane** said there was great concern that innocent people may be hurt or picked up in this web of information. Amendment #5 will cover this. **(EXHIBIT 5)** She said this information will be treated like any other criminal justice information and there are controls and limitations on how the information can be used.

**CHAIRMAN GROSFIELD** asked if any criminal justice information is confidential and are they adding to the information in Title 44. **Valencia Lane** said no, they are not adding to it, but it is clarified. **Mike Batista, MT Department of Justice**, said this information is protected by the criminal justice statute. It is no different than an investigative type of situation where those things remain confidential.

**CHAIRMAN GROSFIELD** asked how those can be accessed and under what circumstances. **Mike Batista** said it can only be accessed or provided in the course of a trial or in appeal.

**CHAIRMAN GROSFIELD** asked if in the course of the trial, the prosecutor is likely to ask for or the judge will grant a request for the phone recorders to be entered as an exhibit. Will only the portion that involves the suspects be entered or the whole thing? **Mr. Batista** said only the suspects would be used not the whole phone record.

# MINUTES

## MONTANA SENATE
## 56th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on January 21, 1999 at 9:00 A.M., in Room 104 Capitol.

### ROLL CALL

**Members Present:**
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing(s) & Date(s) Posted: SB 188, SB 198, 1/19/1999
Executive Action: SB 165, SB 176, SB 188

### HEARING ON SB 188

**Sponsor:** **SEN. TOM BECK, SD 28, Deer Lodge**

**Proponents:** **John Connor, Montana County Attorneys Association**

**Opponents:** **None**

## EXECUTIVE ACTION ON SB 165

**Ms. Lane** provided the Committee with alternative amendments, SB0016501.avl **EXHIBIT(4)** and SB0016502.avl **EXHIBIT(5)**. If SB0016502.avl were adopted, the SB0016501.avl amendments would not be need. The first amendment clarifies that the department does not have any involvement in the disbursal of the funds once the sheriff sells the vehicles. The second amendment addresses a concern regarding leftover money that is not disbursed. The amendment states that excess money from a sale would be handled by unclaimed property. The second amendment is a substitute bill and would then become the bill. It places tow truck operator liens specifically into the agisters' lien laws.

**SEN. HALLIGAN** questioned the priority of the lien in relation to a secured party. **Ms. Lane** explained that in the agisters' lien laws there is a provision that it takes priority over secured holders if they give them certain notice requirements, etc.

**SEN. BARTLETT** asked if the second amendment was acceptable to tow truck operators. **Ms. Lane** explained that she had not been contacted by them.

**SEN. HOLDEN** stated that tow truck drivers charge substantial sums of money for towing and storage. He stated that the charges needed to be negotiated between the customer and the tow truck driver. **Ms. Lane** stated that the amendments were drafted to limit the storage fees for 60 days.

**SEN. HOLDEN** further remarked that when a customer picked up his or her vehicle from the towing business, that customer had to pay the bill before receiving the vehicle. There is no need for a lien on that vehicle. The lien gives them more power against the consumer to charge an inflated fee.

**SEN. MCNUTT** commented that his business deals with untitled vehicles. They invoke a mechanics lien which provides that as long as they hold onto the collateral, they can demand payment for it. He questioned whether a credit union or bank could demand the release of their collateral before the bill is paid. He questioned whether a mechanics lien would take effect on a titled vehicle.

**SEN. HOLDEN** stated that it was his experience that the mechanics' lien is secondary to a bank lien.

***{Tape : 2; Side : A; Approx. Time Counter : 10.33}***

**SEN. BARTLETT** remarked that the agisters' lien allowed a person who had repaired property to keep the property until the bill was paid.

**SEN. DOHERTY** stated that in the instance of an automobile accident where the driver is injured and taken to the hospital, law enforcement notifies a tow truck operator to tow the vehicle. The person who owns the vehicle did not authorize the charges but in order to get their vehicle back the charges need to be paid. Storage fees are also very high.

Motion: **SEN. GRIMES MOVED TO AMEND SB 165 - (SB0016502.avl)**

Discussion:

**SEN. GRIMES** asked if safekeeping or carriage could be clarified in subsection (2). **Ms. Lane** responded that she didn't know why they were not able to use the agisters' lien.

**SEN. HALLIGAN** stated that everyone else charges for actual work provided. Storage can also be an exorbitant amount. He suggested stating that the fees needed to be a reasonable amount.

**SEN. GRIMES** questioned whether reasonable should apply to everything in subparagraph (2). **Ms. Lane** asked if the lien should apply to storage as well as towing charges. This would include a new subsection that would differentiate between storing of motor vehicles that have been towed versus everything else.

**CHAIRMAN GROSFIELD** questioned whether inserting the word reasonable to apply to agisters' lien laws may cause title problems. **Ms. Lane** did not see a problem.

**SEN. DOHERTY** remarked that applying the word reasonable to tow truck charges and storage charges is a reasonable thing to do. It may be unreasonable to insert "reasonable" into the entire agisters' lien. There are people who would be unaware of this action in terms of adequate public notice for a hearing.

**SEN. BARTLETT** explained that the agisters' lien does not take precedence over perfected security interests unless within thirty days from the time that the property is received, the agisters' lien holder gives notice to the secured party. Within 20 days after this is mailed, or ten days after it is given personally, the secured lien holder or representative may take possession of the property by paying what is due to the agisters' lien holder. This does provide protection for credit unions and banks who have perfected security interest in a vehicle. The agisters' lien can be enforced within 30 days after they provide the service. The

earliest service of the tow truck operators would be towing the vehicle.

Motion: **SEN. GRIMES AMENDED HIS MOTION TO INSERT REASONABLE TOWING AND STORAGE. HE WOULD ELIMINATE (2) AND (3).**

**Ms. Lane** stated that in (2), line 5, following the word "carriage" an insertion could state "including the towing and storage of a motor vehicle".

**SEN. GRIMES** suggested stating "carriage, towing, or storage of the article". This would strike the new language in (3).

**Ms. Lane** explained that the amendment is still drafted as a substitute bill. She added that **SEN. GRIMES'** motion is to use SB0016502.avl, strike out the new language in (3)(a) and (b) and simply insert "towing and storage" in (2).

Vote: **The motion carried, 7-2, with SENATORS DOHERTY and HOLDEN voting "no".**

Motion: **SEN. DOHERTY MOVED TO INSERT THE WORDS "REASONABLE TOWING OR REASONABLE STORAGE".**

**Ms. Lane** suggested an insertion in the second to the last line in (2), following material, stating "or reasonable towing and storage charges".

Vote: **The motion carried unanimously, 9-0.**

Motion/Vote: **SEN. HALLIGAN MOVED SB 165 AS AMENDED. The motion carried, 8-1, with SEN. HOLDEN voting "no".**

*{Tape : 2; Side : A; Approx. Time Counter : 10.55}*

## EXECUTIVE ACTION ON SB 176

Motion: **SEN. HALLIGAN MOVED TO AMEND SB 176, (SB0017601.avl - EXHIBIT(6).**

Discussion:

**SEN. GRIMES** remarked that amendments 4-6 addressed a pattern of infliction of pain. This is quite subjective and may create major issues out of minor circumstances that occur in facilities.

Vote: **The motion carried unanimously.**

# MINUTES

## MONTANA SENATE
## 56th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on January 25, 1999 at 10:00 A.M., in Room 325 Capitol.

## ROLL CALL

**Members Present:**
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

**Members Excused:** Sen. Ric Holden (R)

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**
Hearing(s) & Date(s) Posted: SB 75, SB 221, SB 222, SB 250, 1/22/1999
Executive Action: SB 165, SB 213, SB 222

## HEARING ON SB 250

**Sponsor:** **SEN. SUE BARTLETT, SD 27, Helena**

**Proponents:** **None**

**Opponents:** **John Larson, Missoula District Court Judge**

Motion: **SEN. BARTLETT** moved that **SB 213 BE AMENDED BY STRIKING FROM THE REPEALER SECTION "45-5-221" AND CHANGING THE VERB FROM "ARE" TO "IS".**

Discussion:

**SEN. BARTLETT** stated that if amended, the section would read: "Section 45-5-222, MCA is repealed."

**SEN. DOHERTY** remarked that the bill as amended is a sentence enhancement and section 221 addresses specific crimes. He questioned whether this would work. **Ms. Lane** stated this would involve two sections of law on the books that prohibit certain activities and the prosecutor would have to determine how he would charge the crime.

**CHAIRMAN GROSFIELD** added that during the hearing it was mentioned that under 222 and 221 there were penalties. He added that 222 uses the wording "except when 221 applies". This would not allow for an accumulation of penalties. Under SB 213 with 221 still in effect there could be enhancement of a penalty.

**SEN. GRIMES** asked **SEN. BARTLETT** if she would support the bill with the amendment. **SEN. BARTLETT** stated that she is firmly convinced that the vagueness would cause the legislation to be struck down. Her amendment would reduce what she perceives to be the damage of the bill as currently amended. Retaining 221 on the books would reduce the damage.

Vote: Motion **failed 4-4 on roll call vote.**

Vote: Motion **carried 5-4 with Bartlett, Bishop, Doherty, and Halligan voting no.**

## EXECUTIVE ACTION ON SB 165

Motion: **SEN. HALLIGAN** moved that **SB 165 BE AMENDED - SB0016506.avl, EXHIBIT(8).**

**Ms. Lane** explained that the amendment included a new subsection (3) at the suggestion of **Brenda Nordlund, Department of Justice.** She stated that there should not be silent liens on titled vehicles. This requires that the lien be filed with the Department of Motor Vehicles.

Vote: Motion **carried unanimously - 8 -0.**

Motion/Vote: **SEN. MCNUTT** moved that **SB 165 DO PASS AS AMENDED. Motion carried unanimously - 8-0.**

**SB 155** SPONSOR: Berry, Dale SHORT TITLE: Revise disclosure laws for real estate brokers
REFERRED ON: 02/16/1999 HEARD ON: 03/03/1999
EXECUTIVE ACTION: 03/03/1999 Bill Concurred -- VOTE: 18 - 1
FINAL DISPOSITION 03/19/1999 Chapter Number Assigned

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**SB 158** SPONSOR: Glaser, Bill SHORT TITLE: Revise dangerous drug laws
REFERRED ON: 02/16/1999 HEARD ON: 03/04/1999
TABLED ON: 03/18/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

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**SB 163** SPONSOR: Mahlum, Dale SHORT TITLE: Railroad vandalism and trespass act
REFERRED ON: 02/16/1999 HEARD ON: 03/11/1999
TABLED ON: 03/23/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

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**SB 165** SPONSOR: Lynch, J.D. SHORT TITLE: Create possessory lien for the payment of towing and storage charges
REFERRED ON: 02/16/1999 HEARD ON: 03/08/1999
EXECUTIVE ACTION: 03/09/1999 Bill Concurred as Amended -- VOTE: 16 - 4
FINAL DISPOSITION 03/25/1999 Chapter Number Assigned

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**SB 179** SPONSOR: Holden, Ric SHORT TITLE: Clarify time of effect of temporary driving permit
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 02/16/1999 HEARD ON: 03/10/1999
EXECUTIVE ACTION: 03/19/1999 Bill Concurred -- VOTE: 17 - 3
FINAL DISPOSITION 04/12/1999 Chapter Number Assigned

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**SB 186** SPONSOR: Wells, Jack SHORT TITLE: Revise the places inside of which a concealed weapon may not be carried
REFERRED ON: 02/16/1999 HEARD ON: 03/05/1999
EXECUTIVE ACTION: 03/25/1999 Bill Concurred as Amended -- VOTE: 14 - 6
FINAL DISPOSITION 05/07/1999 Chapter Number Assigned

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**SB 188** SPONSOR: Beck, Tom SHORT TITLE: Clarify in criminal laws that "in state prison" means "in official detention"
REFERRED ON: 02/16/1999 HEARD ON: 03/05/1999
EXECUTIVE ACTION: 03/05/1999 Bill Concurred -- VOTE: 12 - 1
FINAL DISPOSITION 03/23/1999 Chapter Number Assigned

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# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 56th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN ROBERT C. CLARK**, on March 8, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

### ROLL CALL

**Members Present:**

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 230, SB 221, SB 222, SB 165, 3/2/1999

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

*{Tape : 1; Side : B; Approx. Time Counter : 89 - 407}*

EXHIBIT(1)

Closing by Sponsor:

**Senator Doherty** made closing statements.
*{Tape : 1; Side : B; Approx. Time Counter : 407 - 550}*

## HEARING ON SB 165

Sponsor:

**Senator Lynch** presented SB 165.
*{Tape : 2; Side : A; Approx. Time Counter : 0 - 23}*

Proponents:

**Bob Gilbert**, Montana Tow Truck Association
*{Tape : 2; Side : A; Approx. Time Counter : 23 - 35}*
**Milo Casagrande**, Tow Truck Operator-Butte
*{Tape : 2; Side : A; Approx. Time Counter : 35 - 40}*
**Bob Anderson**, Montana Sheriffs an Peace Officers Association
*{Tape : 2; Side : A; Approx. Time Counter : 40 - 47}*

Opponents:

None

Informational Testimony:

**Dean Robert**, Dept. of Justice
*{Tape : 2; Side : A; Approx. Time Counter : 47 - 50}*
**Bob Pfeiffer**, Montana Credit Union League
*{Tape : 2; Side : A; Approx. Time Counter : 50 - 55}*

Questions from Committee Members and Responses:

*{Tape : 2; Side : A; Approx. Time Counter : 55 - 372}*

Closing by Sponsor:

Senator Lynch made closing statements.
*{Tape : 2; Side : A; Approx. Time Counter : 372 - 408}*

## EXECUTIVE ACTION ON SB 36

Motion: REP. SHOCKLEY moved that SB 36 BE CONCURRED IN.
Motion/Vote: REP. NOENNIG moved that SB 36 BE AMENDED. Motion failed 10-10. Rep. R. Clark, McGee, Ahner, Anderson, Curtiss, Jore, Molnar, Shockley, Soft, Younkin voting no.
Motion: REP. GALLUS moved that SB 36 BE AMENDED. Motion failed on a voice vote.
Motion/Vote: REP. MCGEE moved that SB 36 BE AMENDED. Motion carried 20-0.
Motion: REP. MCGEE moved that SB 36-AMENDMENT (#3 FROM KEENAN) BE AMENDED. Motion failed on a voice vote.
Motion: REP. YOUNKIN moved that SB 36 BE CONCURRED IN AS AMENDED.
Motion: REP. NOENNIG moved that SB 36 BE AMENDED. Motion carried on a voice vote.
Motion/Vote: REP. YOUNKIN moved that SB 36 BE CONCURRED IN AS AMENDED. Motion failed 10-10 with P. Clark, Eggers, Gallus, Gutsche, Hurdle, Jore, Kitzenberg, Noennig, Williams, and Wyatt voting no.
Motion/Vote: REP. KITZENBERG moved SB 36-TO RECONSIDER. Motion failed 10-10 with Wyatt, P. Clark, Eggers, Facey, Gallus, Gutsche, Hurdle, Jore, Noennig and Williams voting no.
Motion/Vote: REP. MCGEE moved that SB 36 BE TABLED. Motion carried 15-5 with Anderson, Curtiss, Facey, Kitzenberg, and Younkin voting no.
*{Tape : 2; Side : A; Approx. Time Counter : 408 - 550}*
*{Tape : 2; Side : B; Approx. Time Counter : 0 - 550}*
*{Tape : 3; Side : A; Approx. Time Counter : 0 - 430}*

## EXECUTIVE ACTION ON SB 112

Motion: REP. YOUNKIN moved that SB 112 BE CONCURRED IN.
Motion: REP. SHOCKLEY moved that SB 112 BE AMENDED.
Motion passes on a voice vote.

EXHIBIT(3)
(This exhibit handed in after meeting; reason why out of order.)

Executive Action: SB 165-Be Concurred in as Amended, SB 222-Be concurred in Amended, SB 87-Be Concurred In

(Senator Thomas testifying on a different bill in another committee; unable to be present for SB 481, therefore House Judiciary went into Executive Action.)

## EXECUTIVE ACTION ON SB 222

Motion: REP. YOUNKIN moved that SB 222 BE CONCURRED IN.
Motion/Vote: REP. NOENNIG moved that SB 222 BE AMENDED. Motion carried 17-3 with Jore, McGee, and Molnar voting no.
Motion: REP. KITZENBERG moved that SB 222 BE TABLED. Motion failed on a voice vote.
Motion/Vote: REP. SHOCKLEY moved that SB 222 BE CONCURRED IN AS AMENDED. Motion carried 14-6 with Ahner, R. Clark, Jore, Kitzenberg, McGee, and Molnar voting no.
*{Tape : 1; Side : A; Approx. Time Counter : 44 - 218}*

## EXECUTIVE ACTION ON SB 22

Motion/Vote: REP. MCGEE moved SB 22-BE RECONSIDERED AND REMOVED FROM "TABLED" STATUS. Motion failed 6-14 with Ahner, Anderson, P. Clark, Eggers, Facey, Gutsche, Hurdle, Jore, Kitzenberg, Molnar, Noennig, Shockley, Soft, and Wyatt voting no.
*{Tape : 1; Side : A; Approx. Time Counter : 218 - 367}*

## EXECUTIVE ACTION ON SB 165

Motion: REP. WILLIAMS moved that SB 165 BE CONCURRED IN.
Motion/Vote: REP. NOENNIG moved that SB 165 BE AMENDED. Motion carried 18-2 with P. Clark and Eggers voting no.
Motion/Vote: REP. NOENNIG moved that SB 165 BE CONCURRED IN AS AMENDED. Motion carried 16-4 with Anderson, P. Clark, Eggers, and Kitzenberg voting no.
*{Tape : 1; Side : A; Approx. Time Counter : 367 - 550}*
*{Tape : 1; Side : B; Approx. Time Counter : 0 - 233}*

## HEARING ON SB 243